

GOVERNANCE COMMITTEE

Thursday, September 24, 2009, 8:00 a.m.

William Green Building

30 West Spring Street, 2nd Floor (Mezzanine)

Columbus, Ohio 43215

Members Present: Alison Falls, Chair
Larry Price, Vice Chair
William Lhota
James Hummel
Thomas Pitts

Members Absent: None

Other Directors Present: James Harris, David Caldwell, Kenneth Haffey,
Charles Bryan, Robert Smith (arrived 8:09), James
Matesich (arrived 8:05)

Counsel Present: John Williams, Assistant Attorney General

CALL TO ORDER

Ms. Falls called the meeting to order at 8:01 AM and the roll call was taken.

MINUTES OF AUGUST 27, 2009

The minutes were approved without changes by unanimous roll call vote on a motion by Mr. Price, seconded by Mr. Lhota.

REVIEW/APPROVE AGENDA

Ms. Falls reviewed the agenda and noted no changes.

The agenda was approved by unanimous roll call vote on a motion by Mr. Price, seconded by Mr. Hummel.

NEW BUSINESS / ACTION ITEMS

- 1. Board Advisory Structure for Input on Medical Issues**

Per request of Ms. Falls, Legal Director James Barnes provided an overview of options available to the Board for consideration of policy development surrounding medical issues. House Bill 100 authorizes the creation of Board committees. However, O.R.C. §4121.12(F) states that overall administrative function rests with the Administrator in managing and discharging day to day operations. The Board's role is to set strategic goals for BWC, while management's function is to develop methods of accomplishing those goals and making recommendations to the Board. There may be a perception the Board is crossing or blurring the line. The Board must consult with experts within BWC, but not direct them on how to proceed with their functions.

Mr. Barnes noted there is also a potential conflict of interest in that participation may impact one's constituency, or give an appearance of undue influence. Even a perception of undue influence is a serious concern. The Ethics Commission has issued opinions in the past to provide guidance to the Board.

Mr. Harris asked how this issue differs with respect to a medical services committee as opposed to the other Board Committees. Mr. Barnes replied that no director has specific expertise with respect to medical issues. However, the concept of setting boundaries remains the same. For clarification, Ms. Falls asked if the boundaries for the Medical Committee would be similar to those for the Investment and Internal Audit Committees. Mr. Barnes replied in the affirmative. Mr. Barnes clarified that as legal counsel, he is cautioning the Board, but there is no prohibition against moving forward on this issue. Mr. Lhota commented this discussion is beneficial on a periodic basis.

Medical Director Robert Balchick commented that communication, transparency and presentation of diverse views make for better policy. Directors Smith, Pitts and Hummel each noted that they were more comfortable with the committee format than an individual medical liaison. This format provides greater transparency and less opportunity for individual influence. Administrator Marsha Ryan also noted her preference for a committee.

Ms. Falls summarized that the committee format has served the Board well and will assist in providing focus for this "mission critical" area of medical services.

A motion was made by Ms. Falls, seconded by Mr. Price, that the Governance Committee recommend that the BWC Board of Directors create a new standing committee of the Board, the Medical Services Committee. This motion is offered under the authority of Ohio Revised Code

4121.12(G)(2) which allows the Board of Directors to “create any committee . . . that the board determines are necessary to assist the board in performing its duties.” The motion was approved by unanimous roll call vote.

Ms. Falls then outlined a process for implementing the Medical Services Committee. Mr. Harris, Mr. Hummel and Mr. Pitts have expressed an interest in being members. The Governance Committee will accordingly be reduced to three (3) members, with Mr. Pitts and Mr. Hummel moving to Medical Services. Mr. Harris expressed a preference to discontinue Audit Committee membership because of the meeting schedule. Mr. Haffey will be added to the Investment Committee, leaving no director with more than two committee memberships. There were no forthcoming comments from the directors.

It will be a challenge to add to the meeting schedule. Investment and Audit Committees may be moved to a midday back-to-back time frame, in order to accommodate Mr. Haffey taking on another committee. When there is a public forum scheduled, so committee meetings may have to be scheduled simultaneously. Mr. Harris suggested that Governance Committee not be held simultaneously with other committees, as all directors like to attend that meeting. Robert Coury, Chief of Medical Services and Compliance, noted that Medical Services staff is frequently required to attend Audit Committee, as opposed to Actuarial or Investment.

The Medical Services Committee will have an initial meeting in October. Governance Committee will continue to review medical rules until the Medical Services Committee is fully organized with a charter. The Governance Committee will also review its ongoing schedule, as its rule review function should decrease over time.

A consensus was reached that Ms. Falls recommend to the Chairman, Mr. Lhota, that Mr. Harris, Mr. Hummel and Mr. Pitts form the Medical Services Committee and that Mr. Harris be the chair. Mr. Lhota opined a formal vote was not necessary. He thanked Ms. Falls, the new committee members and staff for their input of time and ideas into this process.

2. MOTIONS FOR BOARD CONSIDERATION

A. FOR SECOND READING

1. Workshops and Factories: Rules 4123:1-5

Don Bentley, Director of Technical Support, Division of Safety and Hygiene, presented 32 safety rules. All rules were subject to external and internal review, with stakeholder input provide by two representatives each of employers and employees. The goal was to create clear, specific rules

updated to current Occupational Safety and Health Administration (OSHA) standards.

In response to questions from last month's meeting, Mr. Bentley clarified that references in Rule 4123:1-5-99.1 to safety belts and harnesses being "securely fastened" to a "structure" are derived from the equivalent safety rule for construction, 4123:1-3-03. A structure is defined as a silo, hopper, tank or storage area. The exceptions have been reduced in Rule 4123:1-5-17 to provide for alternate safety devices. An example would be the difficulty of requiring a ladder cage for a chimney.

The use of skin designation regarding exposure to certain chemicals, if absorption will create an additional hazard, was also reviewed. Based on current OSHA standards, two chemicals were added and nine chemicals removed from Rule 4123:1-5-99.1. Exhaust ventilation illustrations contained in Rule 4123:1-5-99.2 were removed. These are only examples, which were being inappropriately cited as authority. Safety & Hygiene consultants continue to have this information in a manual. The stakeholder participants were in favor of this change.

Mr. Price noted that there was a great deal of stakeholder agreement to the proposals, and wondered if areas of disagreement remained. Mr. Bentley replied that if there was a disagreement, the parties looked to OSHA for a resolution and abided by those standards. There are no remaining issues.

A motion was made by Mr. Price, seconded by Mr. Lhota, that the Governance Committee recommend that the BWC Board of Directors approve the Administrator's recommendations on the five-year rule review of Chapter 4123:1-5 of the Administrative Code, the workshops and factories safety rules. The motion consents to the Administrator amending thirty-two rules of the workshops and factories safety rules as presented here today. The motion was approved by unanimous roll call vote.

RULES FOR FIRST READING

1. 2010 Inpatient Fee Schedule, Rule 4123-6-37.1

Freddie Johnson, Director, Managed Care Services, and Anne Casto, Medical Services Consultant, presented proposed rule changes to the inpatient fee schedule. While this is a small portion (.2%) of bills, it is a critical segment due to the seriousness of injuries and comprises 14% of annual expenses. The proposed increase in 2010 is 2.9%, which translates to \$2.4 million. This is scheduled for second reading next month and should take effect approximately February 1, 2010 after Board and JCARR approval.

To obtain the proper rate, Medicare information was reviewed using a base rate for each hospital, multiplied by the rate for a specific service, taking into account the resources used. This produces a base rate for the fee, which is then adjusted further for such factors as the patient base and the type of hospital, such as a teaching hospital. Per a question from Mr. Smith, Ms. Casto explained that base rates can be disparate, depending on these factors. Ms. Casto stated she has seen a base rate as high as \$8,000 and lower than the national average of \$5,100 for Ohio hospitals. The base rate calculation methodology was implemented by BWC in 2007.

The Medicare rule updates published August 27, 2009 were reviewed. There were no increases in coding and documentation adjustments, but there was a 1.6% increase in payments. The reason BWC is projecting a 2.9% increase is that BWC's top ten procedures/services differ from Medicare. While Medicare had decreased costs in six out of its top ten services, BWC had a decrease in only three of its top ten services. BWC also has more surgery and trauma encounters than Medicare.

Mr. Harris inquired if there is a difference in population covered by Medicare and BWC. Although the evaluation is similar, the differences have to do with level of severity. In response to a question from Mr. Bryan, BWC pays approximately 20% more than Medicare, to promote our focus on providing quality services. This payment percentage was last revised in 2008, and is comparable to private insurers based on what data BWC has been able to obtain. Mr. Johnson advised, per a question from Mr. Smith, that there has been no disagreement or complaint from stakeholders over lack of access to care. Mr. Pitts noted anecdotally that he does not see an issue from his constituency.

2. HPP Provider Rules 4123-6-19 to 4123-6-46

Before the presentation began, Don Berno, Board Liaison, explained that a more extensive chart reflecting the merger of Chapter 7 rules into Chapter 6 will be available to the Board next week.

Mr. Johnson and Nancy Leeper, Medical Policy Program Coordinator, presented proposed amendments to Rules 4123-6-19 through 4123-6-46 regarding Health Partnership Program (HPP) providers. These changes result from a joint effort between the Self- Insured and Medical Services Departments. The stakeholder feedback is included. Chapter 7 rules are being rescinded in their entirety and incorporated into Chapter 6, which are now applicable to both state fund and self-insuring employers per the newly created Rule 4123-6-01.1.

Mr. Johnson and Ms. Leeper reviewed the proposed amendments, noting specific changes to individual rules, rescission, additional language, and combining information into other rules. In particular, language was added to Rule 4123-6-06.2 limiting how providers may treat injuries to themselves or immediate family members. This was done to avoid conflicts of interest. Rule 4123-6-14 was revised to give more clarity on what is included in provider bill review. Rule 4123-6-16 clarifies what treatment guidelines will be used by managed care organizations in order to be consistent. Rule 4123-6-31 combines six (6) rules to consolidate payment criteria for services and supplies.

Mr. Pitts asked if Rule 4123-6-43(B) had any language changes. Mr. Johnson explained that it did not. Per a question from Mr. Hummel, Mr. Johnson stated there are no major content changes brought about by these amendments. This will be reflected on the updated crossover chart.

3. Policies and Procedures for Public Forums

Mr. Berno reviewed draft policies and procedures for public forums. Ms. Falls asked Mr. Lhota as Board Chair if item III(e), permitting directors to question speakers, would present a problem as a change in protocol. Mr. Lhota stated he did not see a problem so long as questions are directed through the Chair for approval. The Chair will also have discretion to control the discussion. Mr. Price expressed comfort with having the Chair control the proceedings. Mr. Pitts suggested the phrase “with permission of the Chair” be added to item III(e).

Per a question from Mr. Lhota, Mr. Barnes opined that a reference to Robert’s Rules of Order was not necessary because a public forum is not a Board or Committee meeting. Mr. Harris also noted a more extensive discussion could occur with constituents after the forum.

Per suggestion of Mr. Lhota, the language “with the approval of the Board” will be eliminated from the last sentence of the first paragraph. The Administrator will propose a schedule.

With respect to item IV, language will be changed to read “As appropriate, staff will inform Directors within two weeks of the forum of actions taken to address concerns raised by presenters.”

A motion was made by Ms. Falls, seconded by Mr. Pitts, that the Governance Committee recommend the BWC Board of Directors adopt the

policies and procedures for public forums, as amended, as approved here today. The motion was approved by unanimous roll call vote.

ADJOURNMENT

Due to time constraints, the remaining agenda items were deferred to the next meeting date.

Mr. Pitts moved to adjourn the meeting at 10:02 AM, seconded by Mr. Lhota and approved by unanimous roll call vote.

Prepared by Jill Whitworth, Staff Counsel
September 24, 2009

GOVERNANCE COMMITTEE

Friday, September 25, 2009, 9:30 a.m.

William Green Building

30 West Spring Street, 2nd Floor (Mezzanine)

Columbus, Ohio 43215

Members Present: Alison Falls, Chair
Larry Price, Vice Chair
William Lhota

Members Absent: None

Other Directors Present: James Harris, David Caldwell, Kenneth Haffey
(arrived 9:50), Charles Bryan, Robert Smith, James
Matesich, James Hummel, Thomas Pitts

Counsel Present: None

CALL TO ORDER

Ms. Falls called the meeting to order at 9:30 AM and the roll call was taken.

REVIEW/APPROVE AGENDA

Ms. Falls reviewed the agenda items and noted the addition of “ Protocol for Waiver of Second Reading” as an addition under Discussion Item 3.

The agenda as amended was approved by unanimous roll call vote on a motion by Mr. Price, seconded by Mr. Lhota.

DISCUSSION ITEMS

1. Review of Committee Charters

Don Berno, Board Liaison, presented the several committee charter drafts for discussion.

Governance Committee charter must be revised to reflect the change in number of members from five (5) to three (3). Mr. Lhota suggested a “ catch-all” bullet point be added to include “ other duties as assigned” . An extended discussion was had among the committee members and directors

with respect to the language “ additional meetings may be held at the request of two or more members of the Committee, or the Chair of the Board.” Mr. Price pointed out the need for such language in some form, in the event an additional meeting is necessary. Mr. Matesich and Mr. Hummel noted that there are inconsistencies among the charters with respect to language involving this topic. Mr. Berno will draft revised language.

Ms. Falls questioned whether the list of duties and responsibilities is accurate and, if not, should be revised. Duties should be grouped together in terms of function to provide clarity. Further discussion was had concerning the *ex officio* member status of the Board Chair and how this might impact simultaneous meeting times. Mr. Price clarified this gives the Chair the ability to attend committee meetings, but does not require attendance. The *ex officio* member is included when subject to the requirement of three members for a public meeting requiring notice. However, in a three-member committee, this would only require two members. Mr. Pitts asked what constitutes a “ meeting” . Chief Legal Counsel James Barnes replied that any discussion of Board business is a meeting.

In the Actuarial Committee charter, Mr. Lhota suggested that under “ Membership” , the language be changed from “ actuary member” to “ actuary professional” . Mr. Berno noted that language was taken directly from statute. A discussion was had concerning the sentence “ Each committee member will be independent from management” . BWC Administrator Marsha Ryan explained that because individuals other than directors can be appointed to the Actuarial Committee, this clarifies such individuals cannot be BWC management. Mr. Barnes agreed with this interpretation. Mr. Caldwell thought the language should remain if it is a correct interpretation. Mr. Price found the language too ambiguous, and recommended it be clear enough for anyone to understand. Ms. Falls opined she felt the language was unnecessary, because there are other checks and balances within the system.

With respect to the Audit Committee charter, the discussion related primarily to reorganizing the “ Duties and Responsibilities” section to prioritize them in terms of importance and function. Mr. Berno suggested that statutory requirements be put first. Ms. Falls noted that a new Committee member should be able to clearly understand their duties and responsibilities from reviewing the charter. Mr. Smith suggested that statutory language be put in quotes with a relevant citation to distinguish it. Per a question from Ms. Falls, Mr. Berno will look at whether committee assignments for BWC statutory reporting to the Governor and/or legislature should be included in the charters.

The Investment Committee charter “ Duties and Responsibilities” section lists under item 5: “ Recommend investment counsel to the Board for engagement.” Ms. Ryan noted the Attorney General makes this appointment. Mr. Barnes stated this is done on a fiscal year basis but can be reviewed at any time. BWC presently does not utilize investment counsel. Mr. Smith suggested the phrase “ as appropriate” be added.

Mr. Lhota then stated the statutory language is clear that the Board must vote on when committees meet. Ms. Falls stated this should be put in all charters. Mr. Harris requested that Mr. Berno prepare a draft charter for the Medical Services Committee.

2. Correspondence Protocol

Mr. Berno reviewed the Governance Guidelines for when a Board member receives correspondence from an outside party. Ms. Falls noted two items are necessary: (1) that there is a point person to respond, with copies of the response distributed to all Board members, and; (2) that the Board policy is to acknowledge and respond to all correspondence. Mr. Berno is currently the point person.

Mr. Price stated that if a letter is addressed to him personally, he feels responsible to provide a timely response, even if it is simply an acknowledgement of the letter and who is addressing it. Mr. Berno would still respond on his behalf. Mr. Lhota noted that all such responses are public records, which Mr. Berno will maintain.

Discussion then ensued regarding how to handle phone calls. Ms. Ryan stated that BWC management or their designee return calls on behalf of the directors. A lot of misinformation is often circulated. BWC staff can research the specific issue and provide an accurate response. Mr. Smith requested that staff should still indicate the director is available for discussion.

Mr. Matesich commented that as a business owner himself, he is happy to respond from time to time personally rather than as a director, as appropriate. Mr. Haffey wondered how one separates the business person from the director. Mr. Barnes opined that this separation really cannot be accomplished. Mr. Pitts gave the example that as an attorney, he could not speak to an injured worker who had made his or her concerns known to the Board. He favored the idea of turning over phone calls to the Administrator.

Ms. Falls cited an example of correspondence which is sent to all Board members. These are generally funneled through Mr. Lhota.

In conclusion, the consensus was reached that the Board is comfortable having individual directors respond to communications as they choose, with the caveat that all Board members should be copied on the response from BWC staff.

3. Protocol for Waivers of Second Reading

Ms. Falls began the discussion by noting that current procedure for waiver of a second reading of a rule is somewhat unclear regarding what to do when there is not full consensus for waiver. Mr. Price has previously noted that a requirement to put the matter to a vote would clarify the process and clear any ambiguities. The Committee then discussed different approaches to this issue. If any of the Committee members believe there is a need to waive a second reading for rules, then the Committee could make a motion to recommend that the Board waive the second reading Discussion should then ensue. During discussions regarding the waiver of the second reading, any Director with reservations about waiving could explain his or her position. At the conclusion of discussion, roll call would be taken and the majority position would be in effect.

Previously, if there was *any* objection to waiver, the second reading would occur. Mr. Bryan emphasized that waiver should only occur in exceptional circumstances. Mr. Matesich noted the importance of having second readings for rules, in that all information may not be available at the time of first reading. In addition, a second reading gives more opportunity to have questions answered regarding a particular rule. Because there is a potential for abuse, committees must continue to be fully diligent and not bypass their duties to review fully all issues related to the rules prior to taking a vote.

Mr. Lhota asked whether a supermajority of four votes for a five-member Committee, or unanimity for a three-member Committee, might be appropriate for consideration. Mr. Pitts and Mr. Matesich supported the idea that a majority of the Board would be needed to ratify the waiver. This majority vote by the Board would serve the same function as a supermajority of the Committee. In addition, the dissenting Committee member could make a case for the second reading before the entire Board when the issue of waiver proceeded to a vote. The member could request this through an amendment to the Board agenda.

Ms. Ryan emphasized that this Board and its Committees meet far more frequently than most entities. The BWC staff makes a tremendous effort to support the efforts of the Board and to accomplish business in a timely fashion. Any request made by BWC for a waiver of a second reading would not be done lightly, and would only occur if absolutely necessary.

Based on the discussions at this Committee meeting regarding this process, Ms. Falls requested that protocols be drafted by Mr. Berno and addressed at the October Governance Committee meeting.

4. Committee Calendar

There are no changes to the calendar. However, Ms. Falls noted that a general discussion of the terms “guard” and “safeguard” is on the agenda for October. In addition, there is a public forum, and the first meeting of the Medical Services Committee. Mr. Matesich suggested the public forum be held on Friday to avoid committee meeting overlap or changes in the schedule.

ADJOURNMENT

Mr. Price moved to adjourn the meeting at 11:00 AM, seconded by Mr. Lhota and approved by unanimous roll call vote.

Prepared by Jill Whitworth, Staff Counsel
September 25, 2009